IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 12TH JANUARY 2007 / 22ND PAUSHA 1928

CRP.No. 1245 of 2002(A)

{R.C.A.NO.14/2000 OF THE ADDITIONAL DISTRICT COURT,
[RENT CONTROL APPELLATE AUTHORITY], KOZHIKODE
IN R.C.P.NO.94/1998 OF THE ADDITIONAL
MUNSIFF'S COURT [RENT CONTROL COURT],KOZHIKODE-I}

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REVN. PETITIONERS: R3 TO 8/R3 & LRS OF R1 & 2:
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1. A.RATNAKARAN, SON OF GOPALAN NAIR,
AMMATHUR HOUSE, IRINGALLUR, KOZHIKODE.

2. K.S.PARVATHY, W/O.K.R.VISWANATHAN,
KEERTHI NAGAR, P.O.PALLIPURAM, PALAKKAD.

3. K.V.SREERAM, S/O.K.R.VISWANATHAN,
"VIGNESH", KEERTHI NAGAR, (P.O)
PALLIPPURAM,
PALAKKAD.

4. K.V.SUBRAMANIAN, S/O.K.R.VISWANATHAN,
VIGNESH, KEERTHINAGAR,
P.O.PALLIPPURAM,PALAKKAD.

5. M.LEELA, W/O.SUBRAMANIAN,
37 SAMBIKA ROAD, 4TH FLOOR, NEW BUILDING,
MALLESWARAM, BANGALORE-3.

6. K.S.RAMESH, S/O. SUBRAMANIAN,
31 SAMBIKA ROAD, 4TH FLOOR, NEW BUILDING,
MALLESWARAM, BANGALORE-3.

BY ADV. SRI.K.P.BALASUBRAMANYAN

RESPONDENTS: APPELLANTS/PETITIONERS:
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1. S.LAKSHMI BAI,
W/O.SETHU VENKITA RANGA GUPTA,
10/946,PALAYAM ROAD
KOZHIKODE.

2. K.S.SIVAKUMAR,
S/O.SETHU VENKITA RANGA GUPTA,
10/946,PALAYAM ROAD,
KOZHIKODE.

3. K.S.RAMESH KUMAR,
S/O.SETHU VENKITA RANGA GUPTA,
10/946,PALAYAM ROAD,
KOZHIKODE.

4. K.S.SARAVANA KUMAR,
S/O.SETHU VENKITA RANGA GUPTA,
10/946,PALAYAM ROAD,
KOZHIKODE.

BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 12/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON C.M.P.NO.3170/02 & I.A.NO.2855/06
IN C.R.P.NO.1245/02

DISMISSED.

Sd/-
(K.A.ABDUL GAFOOR)
JUDGE

Sd/-
(K.R.UDAYABHANU)
12.01.2007. JUDGE

sk/-

//true copy//

P.S. To Judge.

K.A.ABDUL GAFOOR &
K.R.UDAYABHANU, JJ.

C.R.P.No.1245 of 2002 A

Dated this the 12th day of January, 2007.

O R D E R

Udayabhanu, J.

The revision petitioners are the tenants and the alleged sub-lessee, who dispute the findings of the appellate authority under Sections 11(3) and 11 (4)(v) of the Kerala Buildings (Lease and Rent Control) Act [Act 2 of 1965] {hereinafter referred to as 'the Act'}, reversing the decision of the Rent Control Court.

2. The respondents/landlords had sought for getting vacant possession of the plaint scheduled premises, which was taken on rent in 1984 on a rental of Rs.30/- per month. The same is the rent prevailing right now also. According to the respondents, they wanted to branch out and start

separate business establishments. They are running hardware business jointly in rented rooms and one of the said rooms is situated on the side of a by lane. It is the case of the landlords that revision petitioners 1 and 2, the original tenants, have sublet the premises to the 1st revision petitioner (3rd respondent), who is conducting a business in Herbal and Ayurvedic Medicines styled as "Retna traders". It is the case that the first respondent is living at Palakkad and the second respondent is at Bangalore and they have sold off their properties in Calicut and left the place for ever.

3. The appellate court found that, so far as the alleged subletting is concerned, the case set up by the landlords stood established beyond any doubt in view of a number of circumstances brought out in evidence. It was found that the notice that was sent was addressed to the business establishment were

redirected and served at Palakkad and Bangalore respectively. It is also found that the business itself is named after the 3rd respondent, who is the first revision petitioner**.** His name is Retnakaran. The business run earlier by the respondents in the premises was hardware business and after the alleged subletting the 3rd respondent started a business in Ayurvedic medicines etc. It is also found that the shares of respondents 1 and 2 [the original tenants] in the alleged partnership business mentioned in Ext.B1 partnership deed is only Rs.1,250/- each only. The contribution of the 3rd respondent is Rs.47,500/-. It was also found from the documents produced that during the initial period, the yearly share of profits given to respondents 1 and 2 was nil during the first two years and in the 3rd year Rs.19.50. The version of RW.1, who is living at Palakkad, is that he used to

visit the shop periodically. That statement appears to be totally incompatible in view of the fact that the share of profits was received as is mentioned above, which is not even sufficient for the travel fare. It is also in evidence of RW.1 that he sold his house in Kozhikode in 1995. Counsel for the revision petitioners relied on Ext.B6 series of receipts produced to show the remittance of licence fee, which is in the name of the first respondent, and that the registration is in the name of the firm, which is hardly sufficient to dislodge the impression as to the actual state of affairs. We find that the appellate court has rightly found that Ext.B1 partnership deed is a fake document.

4. In the abovesaid circumstances, the attempt of the respondents to create an impression of partnership did not succeed. We find no reason at all to disturb the findings of the appellate authority in

this regard. In the light of the above evidence, the findings of the Rent Control Court is really absurd.

5. So far as the contention of the revision petitioners that the landlords are in possession of other shop rooms also is concerned, we find that the preponderance of evidence is in favour of the case set up by the landlords. The contention of the petitioners is that the two shop rooms that they own are in possession of tenants since long and the evidence is that in one of the rooms, one Balasubramanian is conducting wholesale business in clothes and in the other room, one P.B.Sathyapalan is conducting crockery business. The appellate authority has also noted that the respondents have not specifically contended that the above buildings are lying vacant. Of course, the documents in this regard obtained from the local authority were produced at the appellate stage. It is the case of the

revision petitioners that the court ought not to have admitted the documents without proof at the appellate stage. We find that, even if the above documents are ignored, the case of the landlords in this regard stands established as genuine. The tenants could have taken out a commission and proved the fact that the above rooms were lying vacant. No attempt was made by the tenants in this regard. So far as the case that another shop room covered by Ext.A2 partition deed is concerned, the version of PW.1 is that the above is a godown and it is situated on the rear side. In order to establish the above aspect, the landlords have produced documents at the appellate stage. But, it is pertinent to note that an offer was made to the respondents that the above room can be entrusted to them to shift their business which was not agreeable to them. This attitude clearly indicates that the above room is

not suitable for business purpose. In the above circumstances, we find that the findings of the appellate authority are based on firm foundations and there are no reasons to upset the above findings. The same are confirmed.

6. Counsel for the revision petitioners/tenants has sought for six months' time to vacate the premises, so that they can find out a convenient place and shift the business, which we find, is not unreasonable.

7. In these circumstances, the revision petitioners are directed to give vacant possession of the premises to the landlords within six months from today, i.e., on or before **12.07.2007** on condition that they shall remit the rental arrears and continue to pay the rent due from time to time and file an affidavit to that effect before the execution court within 30 days from today.

Civil Revision Petition is accordingly dismissed.

Sd/-
(K.A.ABDUL GAFOOR)
JUDGE

Sd/-
(K.R.UDAYABHANU)
JUDGE

sk/

//true copy//

K.A.ABDUL GAFOOR &
K.R.UDAYABHANU, JJ.

C.R.P.No.1245 of 2002 A

O R D E R

12th January, 2007.